THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 7194 of 1997

28-02-2007

Between:-

Mohd. Shoukath Ali

Petitioner

And

Industrial Tribunal-cum-Labour Court,
Warangal rep., by its Judge and three others.

Respondents

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.No. 7194 of 1997

Oral order:

Daily wage Typist employed by the Divisional Forest Officer, South Division, Subedari, Warangal is before this Court impeaching the award of the Industrial Tribunal-cum-Labour Court, Warangal (for short 'the Labour Court') dated 01-04-1996 in I.D.No. 04 of 1993. The petitioner had raised the dispute under Section 2-A (2) of the Industrial Disputes Act, 1947 (for short 'the Act') seeking reinstatement with continuity of service and full back wages alleging illegal removal, despite having continuously worked without any break in an existing regular vacant post from 02-04-1991 to 06-11-1992.

By the award impugned herein, the Labour Court found that the petitioner had worked for more than 240 days and as such under Section 25-B of the Act, was entitled to the benefits under Section
25-F of the Act which were not extended to him, while terminating his services orally on 07-11-1992. The Labour Court therefore directed reinstatement as a daily wage Typist with benefits of seniority but without any back wages or other monetary benefits. The Labour Court however declined to grant the petitioner the benefit of back wages and other monetary attendant benefits on the ground that the petitioner was paid full wages pursuant to the orders in M.P.No. 3 of 1993 dated 03-08-1993 (Paragraph No.6 of the impugned award).

After the petitioner was reinstated pursuant to the award, it would appear that he was paid less than the minimum wages applicable to the post of a daily wage Typist. Aggrieved thereby, he instituted M.P.No. 3 of 1993 under Section 33-C (2) of the Act. By the order dated 03-08-1993 the respondents were directed to pay minimum wages. That fact was considered by the Labour Court for denying back wages and other monetary benefits.

Sri M. Panduranga Rao, learned counsel for the petitioner would urge that as the oral termination of the petitioner on
07-11-1992 was invalid being in transgression of the mandatory provisions of Section 25-F of the Act, the

termination is void and the petitioner is entitled to reinstatement treating the interregnum period of such illegal termination till reinstatement as having no legal consequence and the order of termination as having been eclipsed for all purposes. As a consequence, contends the learned counsel, the petitioner must be entitled to all consequential benefits including back wages. Denial of back wages, in the circumstances, would tantamount to withholding of the legitimate benefits due to the petitioner, is the contention. It is also contended that the reason recorded by the Labour Court for denying back wages is irrational. That the petitioner was paid the minimum wages pursuant to the orders in M.P.No. 3 of 1993 is wholly irrelevant in considering the issue whether the petitioner is entitled to back wages, urges the petitioner.

Admittedly, the petitioner was serving as a daily wage Typist. There was no question of benefit of continuity of service or seniority except for the limited purpose of computing entitlement to the benefits under Section 25-F of the Act on the petitioner having put in 240 days of service in the preceding twelve months. That the petitioner served for about 260 days in the twelve months (preceding the oral termination) does not invest in the petitioner any legal right to continue in service or a position of permanence in the service. The post of Typist in the Forest Department is governed by the rules made under the proviso to Article 309 of the Constitution of India

(the A.P. Ministerial Service Rules), which consistent with the constitutional discipline of equality (Articles 14 and 16 of the Constitution) enjoin a transparent process of recruitment by a public notification inviting applications from all eligible persons. Regularization of a daily wage Typist would be inconsistent with the mandatory statutory rules issued under Article 309 proviso and would also be inconsistent with the constitutional discipline under Articles 14 and 16. Regularization as pointed out in *Secretary, State of Karnataka v. Uma Devi* [1] cannot be an alternative or legitimate method of recruitment or appointment to public service. On this binding principle of constitutional and public law discipline, it cannot be considered that by mere factum of some officer of the Forest Department having terminated a dailywager contrary to the discipline mandated by Section 25-F of the Act, a vacancy that never existed had sprung into existence in which such illegally terminated daily wage employee could be accommodated as a regular employee. Normatively therefore back wages cannot be drawn and paid where there is no post in which a person could be accommodated in the interregnum i.e., between the dates of termination and reinstatement.

The appropriate principles in this area, to deal with a situation where an officer in the employment of the State or an instrumentality of the State, with reckless abandon and gross disdain for the statutory mandate terminates a

workman in clear violation of the explicit mandate of Section 25-F of the Act and how to balance the interests of the workmen concerned with the larger societal concerns, is apparently yet incoherent. Would it be appropriate to award compensation against the State, recoverable from the officer who carelessly disregarded the law instead of mulcting taxpayer on every occasion; or is it appropriate to grant back wages along with reinstatement. Following the latter course has been the occasional practice hitherto. As a consequence, generation after generation of public servants have suffered no personal or career loss for disregarding the legislative mandate and have continued to issue orders of illegal termination, contrary to Section 25-F of the Act. Such indisciplined State actors have not received any punishment in the system. They continued to prosper in the hierarchy of administration. They drew all the perks of public office and it is the taxpayer, who suffers continuously, silently groaning with increasing tax burdens for the delinquencies of State actors. It is perhaps time to recognize that the citizen is a stakeholder in the governance including in the judicial discourse dealing with the delinquency of the State actors.

Sri Panduranga Rao, the learned counsel would also contend that there are precedents persuasive that have taken a view that on the declaration of invalidity of an order of termination for violation of provisions of

Section 25-F of the Act, an order of reinstatement coupled with an order for payment of back wages is a matter of course and of right. No decision that has taken the citizen stakeholders rights into consideration has been brought to the notice of this Court. Those decisions therefore do not constitute an imperative guidance for the moulding of the relief. Law is dynamic and on account of the very nature of such dynamics post *Umadevi's* case, the law will have to be fine-tuned to balance the command of the Constitution and public law and the interest of the citizens apart from the immediate parties in this adversarial litigation. Illustration of such balancing of competing interests is seen in *MPSEB v. JARINA BEE* [2] and in *MUIR MILLS UNIT OF NTC (U.P.) Ltd. V. SWAYAM PRAKASH SRIVASTAVA*[3]

On the analysis aforesaid, in the considered view of this court and in particular as the petitioner was reinstated into service and is continued as a Typist even without the existence of a post or the need for a temporary Typist having been assessed and even though he has not been regularly appointed, it would not be in the interest of balance of equities to grant back wages too.

The writ petition is accordingly dismissed. There shall be no order as to costs.

GODA RAGHURAM, J

Dated:28-02-2007
Pvks/*

Nb: L.R. Copy to be marked: YES/NO.

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1 (2006) 4 SCC 1
2 (2003) 6 SCC 141
3 (2007) 1 SCC 491